IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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I.T.R. No.64 of 1990
Date of Decision:17.01.2007

The Commissioner of Income-tax (Central), Ludhiana
.....Petitioner

Vs.

M/s Navbharat Banaspati and Allied Industries, Doraha
.....Respondent

CORAM:- HON'BLE MR. JUSTICE M.M.KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. S.K.Mukhi, Advocate for the petitioner.

Mr. S.K.Garg Narwana, Advocate for the respondent.

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Rajesh Bindal, J.

The following questions of law have been referred for opinion of this Court arising out of order passed by the Income Tax Appellate Tribunal, Chandigarh Bench (for short, `the Tribunal') in I.T.A. No.326/Chandi/85 dated 2.8.1988 in respect of assessment year 1981-82:-

> "1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in allowing the assessee's claim for investment allowance in respect of the Refinery unit holding it to be an `Industrial undertaking' for this purpose?
>
> 2. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in allowing the assessee's claim for deduction of Rs.1,38,600/- on account of Sales-tax in respect of goods sent on consignment?"

Briefly, the facts of the case are that the assessee-firm was deriving income from the business of processing of oil as also manufacture and sale of vanaspati ghee. The return for the assessment year in question was filed on 13.9.1981 declaring a taxable income of Rs. 30,33,236/-. The investment allowance claimed in respect of the refinery unit was disallowed by the Assessing Officer. Secondly the provision for sales tax in respect of the consignment sales made by the assessee was also disallowed.

Accordingly, the assessment was completed vide order dated 26.5.1984 under Section 143(3) read with Section 144B of the Income Tax Act, 1961 (for short, `the Act') at a total income of Rs. 39,39,604/-. In appeal before the Commissioner of Income Tax (Appeal) (for short, `the CIT(A)'), the order of assessment disallowing the above referred two claims was set aside. In further appeal before the Tribunal, the order passed by the CIT(A) was upheld.

As far as question No.1 is concerned, it is not disputed by counsel for the parties that the issue, being as to whether the assessee is entitled to the claim of investment allowance on the refinery unit treating the same to be `industrial undertaking', has already been gone into by this Court in I.T.R. No.60 of 1988 – **Commissioner of Income Tax (Central) Ludhiana v. M/s Oswal Woollen Mills Ltd.,** decided on 19.4.2006 wherein considering the issue in detail, it has been held that investment allowance is admissible in respect of a refinery unit treating the same to be an `industrial undertaking' .

As far as question No.2 is concerned, we find from the order of the Tribunal that the assessee had made a provision for a sum of Rs.1,38,600/- on account of sales tax liability which though had not been quantified by assessment as on the last date. However, ultimately the assessee was held to be liable to pay sales tax to the extent of Rs. 6,39,857/- which was supported by an assessment order passed under the Sales Tax Act. The Tribunal relying and referring to the same held that in such a situation it cannot be held that the provision made by the assessee, who was following merchantile system of accounting, was totally uncalled for and has no relation whatsoever with the liability in question.

In view of our above discussion, we answer both the questions against the revenue and in favour of the assessee.

The reference is disposed of accordingly.

(RAJESH BINDAL)
JUDGE

January 17, 2007 **(M.M.KUMAR)**
renu **JUDGE**